SAONAH BT. BEDUL

v.

PENTADBIR TANAH DAN DAERAH MELAKA TENGAH

HIGH COURT MALAYA, MELAKA
DATUK WIRA HAJI MOHD NOOR BIN HAJI AHMAD J.
[SUIT NO. 21- 6 OF 1994]
5 SEPTEMBER 1994

INJUNCTION: Land acquisition - Land acquired by State Government for public purpose - Application for injunction by proprietor of land - Principles - Adequacy of remedy - Whether damages adequate and proper compensation - Balance of convenience - Whether favourable to the defendant.

The plaintiff is the owner and occupant of a piece of land in Mukim Tangga Batu, Melaka (the said land). The said land was acquired by the State Government of Malacca under the Land Acquisition Act 1960 for the creation of a buffer zone for the nearby Petronas oil refinery project. Pursuant to the acquisition, on 9 May 1994, the defendant served on the plaintiff the statutory Form K and thereupon took formal possession of the land. This Form K, however, was dated 1 April 1993. The plaintiff, dissatified with the award made in respect of the acquisition, refused to move out and on 13 July 1994, by administrative action, the defendant issued a notice requiring the plaintiff to move out by 31 July 1994. The plaintiff did not comply and on 11 August 1994, the defendant issued another notice, also by administrative action, requiring the plaintiff to move out by 18 August 1994, failing which the supply of basic amenities to the plaintiff's house would be stopped. The plaintiff again defied the notice and following that the supply of electricity and water to her house was disconnected. The two notices as issued by the defendant, however, bore neither the name nor the address of the plaintiff.

The plaintiff applied for an interim injunction to restrain the defendant from interfering with her occupation of the said land and for an order that the relevant authorities reconnect electricity and water supplies to her house. The primary issue that arose was whether in the circumstances of this case damages would be adequate compensation and injunction therefore ought not to be issued.

Held:

[1] On the issue of whether an interim injunction could be issued against the defendant in view of the provisions of s. 29(2) of the Government Proceedings Act 1956, based on the same reasoning as stated by His Lordship Edgar Joseph Jr. J. (as he then was) in *Tan Suan Choo v. Majlis Perbandaran Pulau Pinang*, this Court is of the view that the answer should be in the affirmative.

[2] The plaintiff has succeeded in raising two triable issues namely, whether Form K including its service on the plaintiff was invalid by reason of inordinate and unexplained delay, and if so, whether such defect would invalidate the inquiry and the subsequent award made by the Collector and secondly, whether there was a waiver on the part of the Acquiring Authority as the result of the issuance of the notices dated 13 July 1994 and 11 August 1994 through administrative action after Form K had been served on the plaintif. These issues however had not been extensively canvassed by the parties and so this Court now is not in the position to decide on those issues but to leave the disputed facts and difficult questions of law for consideration at the hearing of the main suit.

[3] Having been satisfied that triable issues had been raised, what the Court ought to consider next is the question of balance of convenience. In this respect, the principle to apply is that the Court will first consider whether, if the plaintiff were to succeed at the trial in establishing her right to a permanent injunction, she would be adequately compensated by an award of damages for the loss she would have sustained as a result of the defendant's continuing to do what she had herein sought to enjoin. If damages would be adequate remedy and the defendant would be in a financial position to pay them, then no interlocutory injunction should be granted, however strong the plaintiff's claim appeared to be.

[4] In the instant case, it cannot be denied that the State Government was behind the defendant and that no evidence was adduced by the plaintiff to show that the said land was unique or possessed certain speciality, different from the rest of the neighbouring lands involved in the same acquisition, which could not be compensated adequately. As such, there is no doubt as to the adequacy of the plaintiff's remedy lying in damages should she succeed in her claims at the final hearing. Also, bearing in mind that the said land was acquired for a public purpose, the balance of convenience must favour the defendant rather than the plaintiff. In other words, the creation of a safety zone was more important than the plaintiff's interest that she be adequately compensated, especially so, where her objection to the award had already been referred to the Court and that a test case in respect of the same acquisition would soon be heard by the Court.

[Application dismissed].

Cases referred to:
Pemungut Hasil Tanah Daerah Barat Daya, Penang v. Kam Gin Paik & Ors. [1986] 1 CLJ 283/[1986] 1MLJ 362 ***(refd)***
American Cyanamid Co. v. Ethicon Ltd. [1975] AC 396 & 407H ***(foll)***
London & Blackwall Railway Co. v. Cross [1886] 31 Ch. 354 @ 369 ***(foll)***
San Seng Kee v. Director of lands & Mines, Penang & Ors. and Teoh Han Che v. Director of Lands & Mines, Penang & Ors. [1987] 1 MLJ 80 ***(refd)***
Tan Suan Choo v. Majlis Perbandaran Pulau Pinang [1983] 1 MLJ 323 ***(refd)***
Lim Kit Siang v. United Engineers (M) Bhd. v. 3 Ors. [1987] CLJ 347/[1988] 1 MLJ 35 ***(refd)***
Erinford Properties Ltd. v. Cheshire County Council [1974] 2 All ER 448 ***(cit)***

Legislation referred to:
Land Acquisition Act 1960
Government Proceedings Act 1956, s. 29(2)
Specific Relief Act 1950, s. 50, 51 & 54(d)

For the plaintiff - Karpal Singh M/s. Karpal Singh & Co
For the defendant - Sulaiman bin Daud, State Legal Adviser

JUDGMENT

Haji Mohd Noor Bin Haji Ahmad J:
The plaintiff applied for an interim injunction to restrain the defendant, his servants and agents from interfering with the plaintiff's peaceful occupation of her land lot Nos. 1388 and 1389, Mukim Tangga Batu, Melaka (hereinafter referred to as 'the said Land'). The plaintiff also applied for an order to direct the relevant authorities to reconnect the electricity and water supplies to her house situated on the said Land and to restore all other basic amenities of which she had been deprived of since 18 August 1994. Last week I dismissed the application. I shall now proceed to give my reason for that decision.

Briefly, the facts as revealed by affidavit and oral evidence, are as follows.

(1) The said Land together with other neighbouring lands were acquired by the State Government under the Land Acquisition Act 1960 (hereinafter referred to as 'the Act) for the creation of a buffer zone for the nearby Petronas oil refinery project. The award had been made by the collector of Land Revenue which was rejected by the plaintiff, and the objection to the award had been referred to the Court by the collector. A test case in respect of such acquisition has been scheduled for hearing on 9 September 4. The collector took formal possession of the said Land by serving form K on the plaintiff on 9 May 1994, the acceptance of which was refused by the plaintiff. Form K is dated 1 April 1993 [see exhibits HH-3 and HH-4 in the affidavit of Haris bin Hasan, the Land Administrator of Melaka Tengah affirmed on 25 August 1994 (hereinafter referred to refused to move out of the said Land. On 13 July 1994, by administrative action, the Land Administrator issued a notice requiring the plaintiff to move out of the said Land by 31 July 1994 giving the opportunity to the plaintiff to dismantle her house and other buildings on the said Land by herself and to remove all building elsewhere. The said notice bears no name and address (see exhibit HH-5 of the said affidavit). The plaintiff did not comply with the said notice. On 9 August 1994, a meeting chaired by the Chief Minister was convened, wherein the decision to stop the supply of electricity and water to the Plaintiff's house and other basic amenities to the said Land was made. On 11 August 1994, by administrative action, the Land Collector again issued another notice requiring the plaintiff to move out of the said Land by 18 August 1994, failing which the supply of electricity and water and other basic amenities would be stopped (see exhibit HH-5 in the said affidavit). The plaintiff defied the notice and on 23 August 1994 filed a Writ in this Court seeking certain declarations, injunction, damages and other reliefs as prayed therein. Hence, this application was made.

(2) Under cross-examination, the defendant deposed that the said Land and the neighbouring lands were acquired for the creation of a safety zone for the nearby Petronas oil refinery project pursuant to a report by the Department of Environment. Further, he stated that the basic amenities especially the electricity supply were stopped by reason of the safety of the residents playing in the vicinity due to the presence of life wires in the neighbouring houses involved in the same acquisition which had already been vacated pending demolition by the relevant authorities and that the bus and taxi services were discontinued in order to facilitate the demolishing operation. The plaintiff when cross-examined, stated that she refused to move out of the said Land because the compensation made by the collector was not sufficient.

It is manifestly evident from the facts that:

(1) There was a delay of more than one year in the service of form K on the plaintiff, which was not explained.

(2) The notices issued through administrative action do not state the name and address of the plaintiff, and therefore, their validity including the service on the plaintiff is questionable.

(3) The objection of the plaintiff towards the collector's award had been referred to the Court. The plaintiff refused to move out of the said Land because the compensation awarded by the collector was not sufficient.

Mr. Karpal Singh for the plaintiff contended that by reason of the inordinate and unexplained delay in the service of form K on the plaintiff the inquiry and the subsequent award were invalid. He cited the Privy Council case of *Pemungut Hasil Tanah Daerah Barat Daya, Penang v. Kam Gin Paik & Ors.* [1986] 1 MLJ 362 in support thereof. Further, he asserted that the issuance of the notices through administrative action by the land administrator amounted to a waiver in respect of the statutory notices the land administrator issued earlier under the Act and thereafter a new relationship between the parties was created. As the notices do not state the name and address of the plaintiff and as no affidavit of service was filed the notices and the purported service on the plaintiff were invalid. On the other hand Encik Sulaiman, the State Legal Adviser for the defendant submitted that the delay in the service of form K on the plaintiff does not invalidate any proceeding under the Act by reason of s. 56 of the Act. With regard to the issue of waiver, he contended that there was no waiver because the notices which were issued through administrative action cannot override the validity and the operative effect of the statutory notices issued under the Act and further, whether or not the notices had been served on the plaintiff is irrelevant because the collector did not derive his authority to take formal possession of the said Land from them but from form K.

I am satisfied that the plaintiff had raised the following triable issues -

(1) whether form K including its service on the plaintiff was invalid by reason of inordinate and unexplained delay, and if so, whether such defect would invalidate the inquiry and the subsequent award made by the collector?

(2) whether there was a waiver on the part of the acquiring authority as the result of the issuance of the notices dated 13 July 1994 and 11 August 1994 through administrative action after form K had been served on the plaintiff? And whether the notices including the purported service on the plaintiff were valid?

These issues had not been extensively canvassed before me especially on the issue of waiver and further, the delay in serving form K on the plaintiff was not explained. As such, I am not in a position to decide on those issues now but to leave the disputed facts and difficult questions of law for consideration at the hearing of the main suit [see *American Cyanamid Co. v. Ethicon Ltd.* [1975] AC 396 @ 407H]

Having been satisfied that the plaintiff has raised those triable issues, what I have to consider next is the question of the balance of convenience. In *London & Blackwall Railway Co. v. Cross* [1886] 31 Ch. D 354 @ 369 Lindley L.J said:

> The very first principle of law ... is that *prima facie* you do not obtain an injunction to restrain actionable rights in which damages are the proper remedy.

In the *Cyanamid* case *supra,* in dealing with the question of the balance of convenience Lord Diplock made the same point at page 408 B & C in the following terms:

> As to that, the governing principle is that the Court should first consider whether, if the plaintiff were to succeed at the trial in establishing his right to a permanent injunction, he would be adequately compensated by an award of damages for the loss he would have sustained as a result of the defendant's continuing to do what was sought to be enjoined between the time of the application and the time of the trial. If damages in the measure recoverable at common law would be adequate remedy and the defendant would be in a financial position to pay them, no interlocutory injunction should normally be granted, however strong the plaintiff's claim appeared to be at that stage.

On this point, it cannot be denied that the State Government of Malacca was behind the defendant and that no evidence was adduced by the plaintiff to show that the said Land was unique or possessed certain speciality, different from the rest of the neighbouring lands involved in the same acquisition, which could not be compensated adequately. As such, I had no doubt as to the adequacy of the plaintiff's remedy lying in damages should she succeed in her claims at the final hearing. Hence, there was no necessity for me to consider the further question of the balance of convenience (see the *Cyanamid* case *supra* at page 408). But, had it been necessary to do so, then I was satisfied that the balance of convenience favoured the defendant rather than the plaintiff because the said Land was acquired for public purpose (see the Government of Malacca Gazette Jil. 35, No. 2, Tambahan No. 1, No. 18 dated 17 January 1991) that is to say, in reality the creation of a safety zone which was more important than the plaintiff's interest, that is to say, that she be adequately compensated, especially so, where her objection to the award had been referred to the Court and that a test case in respect of the same acquisition would be heard next week. In *San Kee v. Director of Lands & Mines, Penang & Ors.* and *Teoh Han Che v. Director of Lands & Mines, Penang & Ors.* [1987] 1MLJ 80 his lordship Edgar Joseph Jr. J. (as he then was) at page 82 HI, left said:

> In considering the question of the balance of convenience, I thought I was entitled to, and did take into consideration, the public interest since Urban Development Authority is a public authority: (see *Smith & Ors v. Inner London Education Authority*. The wider public interest may, in some cases, as it does in my opinion in this case, prove to be a of decisive importance. See for example, the case of *Rousse-Uclaj v. Seanire & Co.* where the plaintiffs had alleged that a drug marketed by the defendants infringed the plaintiffs' patent, the defendants argued successfully that the drug had life-saving qualities and it was greatly in the public interest not to restrain the sale of such a drug at the interlocutory stage.

On the issue of whether an interim injunction could be issued against the defendant in view of the provisions of s. 29 (2) of the Government Proceedings Act 1956, as raised by the defendant in the said affidavit, I am of the view that the answer should be in the affirmative. My view is based on the same reasoning as stated by his lordship Edgar Joseph Jr. J. (as he then was) in *Tan Suan Choo v. Majlis Perbandaran Pulau Pinang* 1MLJ 323 at page 324 HI, left to ABC, right:

> in my view, s. 54 of the Specific Relief Act, 1950 applies only to applications for perpetual injunctions. It has no relevance to applications for a temporary injunction as in the instant case. This is clear from a reading of chapters IX and X of the Act which are entitled "of injunctions generally" and "of perpetual injunctions" respectively. Section 54 (d) relied on by Mr. Chandran falls under chapter X which deals exclusively with perpetual injunctions. Next, s. 51 (1) which falls under chapter IX states categorically that "temporary injunctions may be granted for any period of a suit and are regulated by the law relating to civil procedure." This in my view, makes the rules of the High Court 1980, applicable and there is nothing therein which constitutes a bar to the granting of an interim injunction against a municipality. I also notice that at pg. 909 of Pollock & Mulla on the Indian Contract & Specific Relief Acts, Eighth Edition, there appears the following short sentence in the commentary entitled "Scope of the section" on s. 56 of the Indian Act which is generally in *pari materia* with s. 54 of our Act: This section gives a list of cases in which a **perpetual injunction cannot be granted.**
> (The emphasis is mine).

Although in that case his lordship was dealing with s. 54(d) of the Specific Relief Act 1950 in relation to a local authority, I am of the opinion that s. 29 of the Government Proceedings Act 1956 relating to injunction only should be read together especially with

ss. 50, 51 and 54(d), of the Specific Relief Act 1950 and that the same consideration should be applied to an officer of the Government, otherwise an awkward situation would arise where, in relation to temporary injunction only, the Government or any of its officers can take shelter under one Act, that is to say, the Government Proceedings Act 1956 but not under the other Act, that is to say, the Specific Relief Act 1950, as what had happened in the case of *Lim Kit Siang v. United Engineers (M) Bhd. & 3 Ors.* [1988] 1MLJ 35, where his lordship Edgar Joseph Jr. J. as he then was) also applied the provisions of s. 29 of the Government Proceedings Act 1956 in dismissing the application for an interlocutory prohibitory injunction.

Therefore, the application is dismissed with cost.

I also refused an application by En. Karpal Singh for an interlocutory injunction pending appeal after he had cited the case of *Erinford Properties Ltd. v. Cheshire County Council* [1974] 2 All ER 448. My reasons are as follows:

(1) The appeal would be frivolous having regard to the fact that damages would be adequate remedy and that the defendant would be in a financial position to pay them, should the plaintiff succeed at the trial of the main suit.

(2) En. Karpal Singh also applied for an order to direct the relevant authorities to reconnect the supply of electricity and water and to restore all other basic amenities if the Erinford injunction is granted. This is not possible because, in view of s. 29 of the Government Proceedings Act 1956 and ss. 51(2), 53 and 54(d) of the Specific Relief Act 1950, that would tantamount to the granting of a mandatory injunction which is classified under perpetual injunctions in Chapter X of the latter Act. Furthermore, it would not be to the best interest of the plaintiff not only in terms of her safety but also the safety of her other neighbours including visitors due to the presence of life wires in the neighbouring houses affected by the same acquisition which had already been vacated and to be demolished by the relevant authorities at any time.

(3) If Erinford injunction is granted only to restrain the defendant, his servants and agents from interfering with the plaintiff's peaceful occupation of the said Land, without the supplies of electricity and water and other basic amenities, it would be detrimental to the plaintiff's well-being.